IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3695 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIZAMUDDIN N QURESHI

Versus

MUNICIPAL COMMISSIONER A M C

Appearance:

Mr.Y.N.Oza, with MR MM TIRMIZI for the Petitioner.

MR MG NAGARKAR for Respondent No. 1

MRS VASAVDATTA BHATT for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/04/2003

ORAL JUDGEMENT

1. The petitioner is an Administrative Officer of the School Board, Municipal Corporation, Ahmedabad. By filing this petition, he has challenged his suspension

order dated 5th March, 2003. By the said order, the petitioner is suspended from the existing post of Administrative Officer. The said suspension order is passed by the Municipal Commissioner.

The contents of the said suspension order are that one Anwarbhai Rasulbhai Shaikh, who was serving at the relevant time as Watchman at the Rajpur-Gomtipur Urdu School No.2, misbehaved with a minor girl student, Rashidabanu, who was a student of Standard VII. Because of the said misconduct, he was dismissed from service and the said Watchman thereafter, raised Industrial Dispute and the Labour Court rejected the prayer for reinstatement and the said employee filed Special Civil Application No.5696 of 2001 before this Court. The Petitioner, as the Administrative Officer, yet, put a proposal before the School Board for settling the matter and was instrumental in getting Resolution No.150 dated 20.8.2002 being passed for the purpose of taking the said employe back in service. By doing so, the petitioner has committed a grave misconduct and that departmental enquiry is contemplated against him and contemplating the enquiry, the said suspension order is passed. The said order is Annexure 'A' in the compilation. The said suspension order is impugned at the instance of the said Administrative Officer in this Special Civil Application.

2. This Court has admitted this petition and the matter was fixed for final hearing. No affidavit-in-reply is filed by any of the respondents. The State Government is also joined subsequently as respondent No.4 and the State is also served. However, nobody has even entered appearance on behalf of the State Government. The State was required to be joined because, it was contended on behalf of the Corporation that the aforesaid order of suspension, passed by the Commissioner, is approved by the State Government on 20th March, 2003. The said order of approval of the State is also placed on record.

3. In order to decide whether the order of suspension is legal and valid, certain factual aspects are required to be taken into consideration. It is not in dispute that one Anwarbhai Rasulbhai Shaikh, who was serving as a Watchman at the Rajpur-Gomtipur Urdu School No.2, which is under the administration of the School Board, misbehaved with one minor girl Rashidabanu, and after enquiry, he was dismissed from service. It is not in dispute that he challenged the said order before the Labour Court by way of Reference (LCA) No.1104 of 1995. The Labour Court rejected the prayer for reinstatement

with continuity of service. However, the Labour Court awarded compensation of Rs.20,000/- in favour of the said watchman. A copy of the Award of the Labour Court is placed on record by Mr.Nagarkar, learned Advocate appearing for the Municipal Corporation. The concerned workman filed Special Civil Application No.5696 of 2001 before this Court. In the said Special Civil Application, the Court had issued notice. The matter was pending at the notice stage. In the said matter, consent terms were submitted before this Court signed by Advocates for both the sides, i.e. the Advocate of the petitioner and the Advocate of the School Board as well as the concerned petitioner and the Administrative Officer (the present petitioner). The consent terms are produced at page 28, Annexure 'G'. By the said consent terms, the said employee is reinstated in service as a Watchman with effect from 1st October, 2002 and the said employee has agreed not to claim any back wages or any monetary benefit from the School Board for the intervening period. The concerned employee has given his undertaking that he will attend to his duties regularly and he will not commit any misconduct during the tenure of his service in the School Board and in view of the said consent terms, this Court disposed of the said Special Civil Application, taking the said consent terms on record. The order of the Labour Court was, accordingly, modified by this Court in terms of the consent terms, which were signed by the parties. Accordingly, the said Special Civil Application was disposed of by this Court on 24.9.2002 and on the basis of the same, the aforesaid Watchman was given a fresh appointment as a Watchman by the School Board.

4. When the aforesaid fact came to the notice of the Commissioner of the Corporation, the Commissioner passed the aforesaid suspension order against the petitioner and the contents of the suspension order are already dealt with earlier. According to the said suspension order, the petitioner is instrumental in getting the Resolution passed, which is passed by the School Board, vide Resolution No.150, dated 20.8.2002, by which the said employee is taken back in service. According to the said order, the petitioner has accordingly committed grave misconduct and, hence, the said suspension order was passed, which is under challenge in this petition.

5. At the time of hearing of the Special Civil Application, Mr.Oza, who is appearing for the petitioner-Administrative Officer, submitted that before entering into such settlement, opinion of the learned Advocate, who was appearing for the school Board in the

said matter, was sought for, and the said opinion is produced in the compilation at page 22, Annexure 'D'. In the said opinion, the counsel for the School Board has stated that, on perusal of the case papers and after taking into consideration the request of the petitioner for fresh appointment in the services of the School-Board, on sympathetic grounds, it is opined that if the said employee is ready and wiling to accept fresh appointment and is not claiming reinstatement in service on his original post and back wages, the School Board may accept his request and settle the matter by offering him only fresh appointment.

The matter was placed before the members of the School Board in view of the opinion of the counsel. The said proposal is signed by the petitioner and three other Officers and there is a noting of the Chairman of the School-Board that the said proposal be placed before the Board. The submission of the officers, including the present petitioner, and the noting of the Chairman, is at page 23 of the compilation. Accordingly, the matter was placed before the Board. The School-Board passed Resolution No.150, by which it was decided to reinstate the said workman on the post of Chowkidar as a fresh recruit. Mr.Oza, for the petitioner, submitted that the petitioner, being an Administrative Officer, is bound to execute the order of the School Board. He submitted that when the School Board took a unanimous decision, for settling the dispute, no blame can be thrown on the present petitioner in any manner. It is submitted by him that it cannot be said, even remotely, that the petitioner has committed any misconduct, which warrants his suspension from duty. It is submitted that, even otherwise, the Commissioner has no power under the Primary Education Act to suspend the Administrative Officer and that the order is, therefore, without any authority of law. The petitioner has absolutely no interest in any manner in the subject matter of dispute between the said Watchman and the School Board. It is also submitted by Mr.Oza that, even otherwise, this very petitioner was instrumental even in getting the confession of the said Watchman that he has committed the misconduct, which is even reflected in the Award of the Labour Court. When the School Board, ultimately, decides to reinstate the employee as a fresh recruit, the petitioner has no say in the matter. Even otherwise, the petitioner has taken abundant caution of getting the opinion of the Advocate, and when the Advocate has also opined to take the said employee back in service and if the Board ultimately acted on the basis of the same, it cannot be said that the petitioner has committed any

misconduct, which warrants the suspension of the petitioner from duty.

Mr.Nagarkar, learned Advocate appearing for the Commissioner, however, pointed out that, as the Administrative Officer, it was the duty of the petitioner to point out to the School Board that this is not a matter in which any settlement outside the Court could have been reached. Mr.Nagarkar has also submitted that the settlement in question is also contrary to public interest and against the administration of the School Board itself and such person, who is found to have indulged in such a serious misconduct of outraging the modesty of a minor girl, cannot be reinstated in service. Mr.Nagarkar also further submitted that even though it is true that the Advocate has given opinion to give fresh appointment to the said workman, the Administrative Officer should not have placed any proposal for settling the matter by preparing Note, which is placed before the School Board for its decision. It is, therefore, submitted that the lapse on the part of the Administrative Officer is such, for which departmental enquiry is contemplated against him. However, he submitted that since the Commissioner is not having full papers with him, it is not possible to file any reply, opposing this petition.

6. So far as the State Government is concerned, even though the State is served, nobody is appearing and opposing this petition.

7. I have heard the learned advocates in detail and, in my view, this order of suspension cannot be sustained in any manner.

8. The following factual aspects, which are, as such, not in dispute, are required to be taken into consideration :-

(1) As against the order of the Labour Court, the concerned employee had already filed a writ petition, being Special Civil Application No.5696 of 2001, in which this Court issued notice;

(2) At the time when the matter was heard, on the basis of the opinion of the Advocate of the School Board, the matter was settled outside the Court and settlement was produced before this Court and this Court disposed of the matter in terms of the consent terms and the order of the Labour Court was accordingly modified;

(3) The opinion of the Counsel is produced on record at page 22;

(4) Four Officers of the School Board prepared the Note, which is placed before the School Board for settling the dispute. Over and above the petitioner, three other Officers have also signed the same.

(5) In Special Civil Application No.5696 of 2001, the present petitioner has also filed a detailed affidavit-in-reply, opposing the said petition;

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(6) At the time when the incident in question occurred, the concerned workman had already pleaded guilty and confessed his guilt before the petitioner and, thereafter, the petitioner, who was working as an Assistant Administrative Officer at the relevant time, ultimately, put the matter before the Administrative Officer for taking appropriate action. The aforesaid fact, as such, is not in dispute. That would show that the petitioner was not having any soft corner for the concerned employee in any manner.

9. In this background, it is required to be considered as to under what circumstances the decision to reinstate the said workman was taken by the School-Board.

During the course of the hearing, certain papers were placed on record by both the sides, which are taken on record. One of such documents is a letter by one Assistant Administrative Officer, which is addressed to the Advocate of the School-Board, who was appearing in Special Civil Application No.5696 of 2001. In the said letter, it is mentioned that the opinion can be given on the following point : Whether the employee can be taken back in service, if he is willing to give up all his claims and he is prepared to be appointed as a fresh recruit by passing a fresh Resolution of the School Board? It is also mentioned in the said letter that the Chairman has consented to give fresh appointment on compassionate ground, by taking a positive stand in the matter. The said letter is also kept on record. From a reading of the contents of the said letter, it is clear that the Assistant Administrative Officer sought opinion on the above said points from the Advocate. It is also mentioned that the Chairman has decided to put the matter

before the School Board and on the aforesaid points, opinion is sought for.

10. Mrs. Vasavadatta Bhatt, who is appearing for the School Board, Respondent No.2, however, submitted that, by reading the said letter, it cannot be presumed that the Chairman had made up his mind to give fresh appointment to the concerned Watchman. By the said letter, it is merely suggested that the Chairman has taken a positive stand for putting the matter before the School Board and nothing beyond that.

However, considering the said letter, it is clear that it was decided to put the matter before the Board for considering whether fresh appointment can be given to the aforesaid employee or not and for that purpose, the opinion of the Advocate was sought for. Ultimately, considering the opinion of the Advocate and considering the noting submitted by the Office, the Board took decision to reinstate the said workman. Considering the said aspect, it is not possible to believe that it is at the instance of the petitioner that the entire Body of the School Board decided to reinstate the said employee. There is nothing on record to suggest that the said idea, to reinstate the said workman, is initiated by the petitioner. On the contrary, the petitioner himself has opposed the petition by filing reply. It is argued by Mr.Oza that, ultimately, if the members have taken a unanimous decision, may be on humanitarian ground or otherwise, the Administrative Officer is merely required to execute the order, for which he cannot be blamed. It is also required to be noted that even such decision is taken on the basis of the opinion of the Advocate. Therefore, it cannot be said that the petitioner is instrumental, even directly or indirectly, in securing the appointment of the aforesaid Watchman in the School-Board. If the elected representatives of the Board has taken a unanimous decision, to reinstate the concerned workman, the petitioner cannot prevent them from taking such decision. It, therefore, cannot be said that the petitioner is, in any way, instrumental in seeing that the School Board passes such a Resolution. Even otherwise, so far as the notings are concerned, the same are prepared on the basis of the opinion of the Advocate and the same are signed by four Officers, including the petitioner. Therefore, in my view, there is absolutely no justification in passing the said suspension order against the petitioner.

It is, no doubt, true, as submitted by Mr.Nagarkar, that, considering the misconduct of the

concerned workman and considering the fact that he himself pleaded guilty to the charge, this is not a case in which mercy should have been shown in favour of such employee, who is required to discharge his duties as a watchman in a Primary School. No doubt, such watchman was involved in a serious misconduct. However, if the said settlement is, in any way, either prejudicial or contrary to the interest of the School Board, it is open for the State Government, if such powers are available, to review such decision in accordance with law, and that too, after following the relevant provisions in this regard, like giving a right of hearing to the School Board, etc. Till this date, it seems that the Government has not taken any such action even for suspending the said Resolution of the School Board. Even otherwise, this Court has modified the order of the Labour Court in terms of the consent terms. So, it is for the Authority to consider whether such course is open in law. I am not expressing any opinion on this issue, because, that is not the subject matter before this Court. However, prima facie, I am of the opinion that the concerned watchman was involved in a serious misconduct and, therefore, the School Board should have taken more care to see whether such person can be retained as a watchman in a primary school, where minor girls are prosecuting their studies. However, all these points are, ultimately, left to the wisdom of the Members of the Board or of the State Government. So far as this petition is concerned, in my view, there is absolutely no justification for suspending the petitioner from service.

Even otherwise, so far as the appointment of the Administrative Officer is concerned, under Section 22(2) of the Bombay Primary Education Act, 1947, the appointment can be made by the School Board after getting approval of the State Government and even in order to remove or suspend such officer, Resolution is required to be passed at least by a majority of two-thirds of the whole number of Councillors of the concerned Municipality. Section 22(2) provides as under :-

> " ... ...
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> 22.(1) xxx xxx
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> (2) The appointment of such Administrative Officer shall be made after inviting and considering the suggestions, if any, of the municipal school board and with the approval of State Government. No such officer shall, save with the previous

sanction of the State Government be removed from his office, reduced or suspended except by a resolution passed by at least two-thirds of the whole number of councillors of the authorised municipality.

... ..."

Mr.Nagarkar, however, argued that so far as the reference regarding suspension in the aforesaid Section is concerned, the same is in connection with the suspension to be recorded after conclusion of departmental enquiry and by way of penalty, and not suspension in contemplation of departmental enquiry. Even if that be so, there is nothing in the Act or the Rules to suggest that the Commissioner has even power to suspend such Administrative Officer. Such power is available with the School Board. So far as the Commissioner is concerned, it is doubtful whether he can suspend the Administrative Officer on his own. It is also required to be noted that even though the said order is approved by the State Government, the State Government has not cared to appear in this matter by engaging an Advocate. The petition is not opposed by the State Government.

11. Considering the aforesaid facts and circumstances, as narrated above, in my view, there is absolutely no justification to suspend the petitioner from the post of Administrative Officer. However, it is also required to be noted that even Officers in Public Bodies or Corporations also should be vigilant and even if any proposal is received for settling dispute from any elected wing, it is the duty of the Officer to verify all the facts and circumstances of the case and he is required to give appropriate opinion. Such care is required to be taken and the petitioner, who is an Administrative Officer, in charge of the Administration of all the schools, should be more careful in future and such Officer must give appropriate noting by giving all the facts and circumstances of the case. Thereafter, the matter can be left to the Board or elected representatives to take appropriate decision. However, all particulars are required to be highlighted even in the opinion or notings prepared by such Officer. However, so far as the facts of the present case are concerned, after getting the opinion of the concerned Advocate, the settlement was recorded, and, therefore, it cannot be said that the petitioner was, in any way, instrumental in getting the resolution passed by the

General Body. It is clear from the facts of the case that the General Body passed a unanimous Resolution. In that view of the matter, there is absolutely no justification in suspending the petitioner. The petition is also not opposed by filing any reply. Therefore, on the factual aspects, the contentions raised in the petition remain uncontroverted and, therefore, the order of suspension is required to be quashed and set aside and it is accordingly quashed and set aside.

In view of what is stated above, the petitioner is entitled to continue to function as an Administrative Officer. It is, however, clarified that so far as the contemplated departmental enquiry is concerned, the same may be conducted in accordance with law, as this Court is not required to give any opinion on this aspect. So far as the present order is concerned, the same is confined only qua the merits of the suspension order impugned in this petition. So far as the contemplated departmental enquiry is concerned, it is for the authority to proceed with the same in accordance with law.

So far as the order of reinstatement of the concerned watchman is concerned, if the School Board or even the State Government is of the opinion that the said Settlement is required to be reviewed or that any legal proceedings, in accordance with law, are required to be initiated for the same, it is for them to consider this aspect. If the State Government has got any power to call for the proceedings and decision of the School Board in connection with the present controversy, it is for the State to take appropriate decision in this behalf in accordance with law. However, I am not expressing any opinion on this aspect of the matter in the present proceedings.

12. Petition is accordingly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B. Majmudar, J.)

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(apj)